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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD KADREY, et al.,

Individual and Representative Plaintiffs,

v.

META PLATFORMS, INC., a Delaware
corporation;

Defendant.

Case No. 3:23-cv-03417-VC

**DEFENDANT META PLATFORMS, INC.'S
RESPONSE TO PLAINTIFFS' MOTION FOR
RELIEF FROM NONDISPOSITIVE PRETRIAL
ORDER OF MAGISTRATE JUDGE (DKT. 284)**

Discovery Cut-Off: December 13, 2024
Date Action Filed: July 7, 2023

Meta opposes Plaintiffs’ Motion for Relief (“Motion”) regarding their untimely document subpoenas (Dkt. 284). Plaintiffs’ Motion should be denied for disregarding this Court’s Scheduling Order (Dkt. 238), mischaracterizing the timing and nature of Meta’s discovery, and failing to establish that Magistrate Judge Hixson’s Order (Dkt. 279) is clearly erroneous or contrary to law.

Background. Pursuant to the Court’s Order extending discovery (Dkt. 211), the parties stipulated (Dkt. 227) to an October 18, 2024 deadline to “Serve Additional Written Discovery Requests” (“Written Discovery Deadline”). Notwithstanding the stipulation, Plaintiffs served 16 untimely third-party document subpoenas: 13 on October 25; 2 on October 28; and 1 on November 13. Dkt. 263 at 2. 12 of the subpoenas were directed to organizations (primarily publishers of Plaintiffs’ books) regarding licensing of training data¹ while the other 4 subpoenas were directed to former and current Meta employees in their personal capacity regarding their knowledge of datasets.² All but one³ of these requests could have been made earlier but were not.

Legal Standard. Judge Hixson’s order may only be modified or set aside if it is “clearly erroneous” or “contrary to law.” Fed. R. Civ. P. 72(a). “This standard is highly deferential—the district judge may not simply substitute his or her judgment for that of the magistrate judge.” *Campbell v. City of Milpitas*, 2014 WL 5077135, at *1 (N.D. Cal. Oct. 9, 2014) (cleaned up).

Judge Hixson Correctly Ruled That Plaintiffs’ Subpoenas Were Untimely. Plaintiffs’ argument that their document subpoenas were not subject to the Written Discovery Deadline is without merit. Plaintiffs cite to their Motion to Amend Case Management Schedule (Dkt. 184), but that filing made no distinction between party and third-party discovery. Plaintiffs also argue—citing nothing—that “the parties were clear that interim deadlines applied only to party discovery.” However, the term “written discovery” in the Scheduling Order has no carve-out for document subpoenas, and caselaw confirms that this term includes third-party subpoenas. *See, e.g., Valcor Engineering Corp. v. Parker Hannifin Corp.*, 2018 WL 6186796, at *2 (C.D. Cal. July 11, 2018)

¹ Bloomsbury, Dramatists Play, Hachette, Harper Collins, MacMillan, OpenAI, Penguin Random House, Simon & Schuster, Springer, Theater Communications Group, Wily, and Reuters.

² Moya Chen (current), Susan Zhang (former), Tim Dettmers (former), and Elisa Anzano (former).

³ Meta’s agreement with Reuters was announced on Oct. 25, 2024, and Plaintiffs’ subpoena to Reuters was issued on October 28, 2024. Meta has agreed to produce this agreement, which is otherwise responsive to Plaintiffs’ discovery requests to Meta.

(deadline for “[a]ll requests for production” includes Rule 45 document subpoenas); *Essociate, Inc. v. Blue Whaler Investments, LLC*, 2012 WL 12953823, at *2 (C.D. Cal. Apr. 12, 2012) (deadline for “all requests for production” includes third-party subpoena including document requests); *see also* Dkt. 263 (citing additional cases). Thus, Judge Hixson’s conclusion that Plaintiffs’ document subpoenas (including Meta’s former employees) were “written discovery” is not clearly erroneous.

Plaintiff’s Requested Extension is Untimely and Unjustified. Plaintiffs’ argument that the Court should extend the Written Discovery Deadline for the subpoenas was not raised with Judge Hixson and is waived. Plaintiffs’ “newly raised facts and arguments need not be considered by the Court for reconsideration purposes under Rule 72” because Plaintiffs are “not entitled to reconsideration ‘of an argument never raised’ before the Magistrate Judge.” *Sung Gon Kang v. Credit Bureau Connection, Inc.*, 2019 WL 5862289, at *2 (E.D. Cal. Nov. 8, 2019) (citations omitted). Further, Plaintiffs’ argument is based on a misleading description of Meta’s third-party subpoenas. Motion at 3-4 (claiming Meta produced documents from Hachette on Nov. 14, 2024). Meta timely served subpoenas on publishers of Plaintiffs’ books (including Hachette) months ago, in *June*; the documents produced on Nov. 14 were provided to Meta 2 days prior. And those document requests did not target the alleged “market for licensing content as AI training data” (Motion at 4), but rather royalty and sales information for Plaintiffs’ books.

In any case, Plaintiffs have failed to show good cause for yet another extension of a missed deadline. Plaintiffs should have requested an extension of the deadline in advance—not as part of this untimely Motion. Plaintiffs also incorrectly assert that Meta does not dispute the subpoenas’ relevance or breadth. For the subpoenas to current and former Meta employees in their *personal* capacity, Plaintiffs have made no relevance showing. And with respect to the organizations, Meta will be producing documents addressing licensing, including the recent agreement with Reuters. Regardless, Plaintiffs were required to serve the subpoenas before the Written Discovery Deadline, and allegedly “misunderstanding” that deadline does not establish good cause for their failure to do so. With just 11 business days left in discovery, there is no time to accommodate these late requests, and Meta would be prejudiced if Plaintiffs were permitted to serve them now. *See* Dkt. 263 at 3.

For the foregoing reasons, Meta respectfully requests that the Court deny Plaintiffs’ Motion.

1 Dated: November 26, 2024

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